

CASE NO. 5:11-CV-762

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANTS JOYNER MARINA, LLC, JOYNER REAL
ESTATE HOLDINGS, LLC, BARNEY G. JOYNER FAMILY TRUST
and DAVID L. JOYNER**

INTERROGATORIES

The documents were served in March of 2011 via Hand Delivery to Doug Driver of Wells Fargo at 150 Fayetteville Street, Raleigh, NC to be forwarded to Scott VanHee.

3. To the extent you provided Wells Fargo with complete copies of the Borrowers' federal and state tax returns within 30 days of filing, identify the date on which such tax returns were provided to Wells Fargo, the address to which such tax returns were sent and the means by which such tax returns were delivered to Wells Fargo.

RESPONSE:

In November of 2011 the returns of Joyner Marina and Joyner Real Estate Holdings were forwarded via e-mail by the Smith Anderson law firm to Mike Booe of K&L Gates and Scott VanHee of Wells Fargo.

4. To the extent you provided Wells Fargo with annual operating reports on all properties on the Real Estate Owned Schedule (as defined in the Loan Agreement and Amended Loan Agreement) within 90 days of the close of the Borrowers' fiscal year ended December 31, 2010, identify the date on which such reports were provided to Wells Fargo, the address to which such reports were sent and the means by which such reports were delivered to Wells Fargo.

RESPONSE:

The documents were served in March of 2011 via Hand Delivery to Doug Driver of Wells Fargo at 150 Fayetteville Street, Raleigh, NC to be forwarded to Scott VanHee.

5. Describe your basis for denying Paragraph 23 of the Complaint.

RESPONSE:

Subsequent to the receipt of the letter, as set forth in Answer 6, the Defendant did make payments on the note and subsequently entered into a forbearance agreement with the Debtor.

6. Identify each payment made by Borrowers to Wells Fargo after demand was issued by Wells Fargo pursuant to the Demand Letter dated April 21, 2011 attached to the Complaint as Exhibit L, specifically identifying the date of each payment and the amount of each payment.

RESPONSE:

On or about July 29, 2011 the Debtor paid \$402,870.02. Thereafter Wells Fargo initiated drafts totaling approximately \$61,000.00 through October of 2011.

7. Describe your basis for denying Paragraph 27 of the Complaint.

RESPONSE:

As set forth in Answer Number 8, the Defendants contend that they made payments on the Amended Note subsequent to the expiration of the Forbearance period.

8. Identify each payment made by Borrowers to Wells Fargo since the expiration of the Forbearance Period on October 18, 2011, specifically identifying the date of each payment and the amount of each payment.

RESPONSE:

The Debtor made monthly payments of approximately \$21,000.00 on or about the 30th day of each month which increased to approximately \$26,000.00 in May of 2012.

9. Describe your basis for denying Paragraph 29 of the Complaint.

RESPONSE:

Upon further review of the Defendants records, the Defendant acknowledges that further payments had not been made after the demand letter Lowe sent.

10. Identify each payment made by Borrowers to Wells Fargo after demand was issued by Wells Fargo pursuant to the Demand Letter dated December 6, 2011 attached to the Complaint as Exhibit M, specifically identifying the date of each payment and the amount of each payment.

RESPONSE:

None

11. Describe your basis for denying Paragraph 31 of the Complaint.

RESPONSE:

The Defendant is not able to agree without an accounting that the amount shown in the Complaint is accurate.

12. To the extent you dispute that Borrower and Guarantor owe Wells Fargo the total amount alleged in the Complaint under the Amended Note, identify the total amount you contend is owed by Borrowers and Guarantor to Wells Fargo under the Amended Note.

RESPONSE:

At this time the Defendant is unable to state an amount with certainty.

13. Identify any legal authority supporting the Affirmative Defense pled in the Answer, including but not limited to any authority stating that Wells Fargo is required to foreclose the Deed of Trust prior to seeking direct recovery from Borrowers and Guarantor after default under the Amended Note and Guaranty.

RESPONSE:

The defense was based on the failure to mitigate in order to determine the amounts due after the collateral had been liquidated.

THIS the 19th day of November, 2012.

/s/ Dirk W. Siegmund
Dirk W. Siegmund, NCSB #20796
Attorney for the Debtor
Ivey, McClellan, Gatton & Talcott, LLP
Post Office Box 3324
Greensboro, North Carolina 27402
Telephone: (336) 274-4658
Facsimile: (336) 274-4540
dws@imgt-law.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS was served via United States mail on those parties listed below.

Brian C. Fork
K&L Gates
4350 Lassiter at North Hills Avenue
Suite 300
Raleigh, NC 27609

A. Lee Hogewood, III
K&L Gates
4350 Lassiter at North Hills Avenue
Suite 300
Raleigh, NC 27609

THIS the 19th day of November, 2012.

/s/ Dirk W. Siegmund
Dirk W. Siegmund
Attorney for the Debtor
NCSB #20796
OF COUNSEL:


IVEY, MCCLELLAN, GATTON & TALCOTT, L.L.P.
Post Office Box 3324
Greensboro, North Carolina 27402
Telephone (336) 274-4658
Facsimile (336) 274-4540
dws@imgt-law.com

VERIFICATION

David Joyner, being first duly sworn, deposes and says:

THAT he is the manager of Joyner Real Estate Holdings, LLC a Defendant in the foregoing RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS JOYNER MARINA, LLC, JOYNER REAL ESTATE HOLDINGS, LLC, BARNEY G. JOYNER FAMILY TRUST and DAVID L. JOYNER and knows the contents thereof; and that all statements contained therein are true and accurate to the best of her knowledge and belief.

This the 16th day of November, 2012.



DAVID L. Joyner

STATE OF North Carolina

COUNTY OF Wake

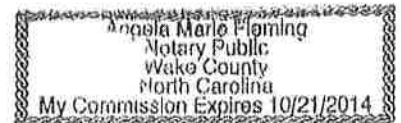
I, Angela Marie Fleming, a Notary Public in and for said County and State, do hereby certify that David Joyner personally appeared before me this day, verified to my satisfaction her identity and acknowledged and executed the foregoing in my presence.

SWORN to and subscribed before me this the 16th day of November, 2012.



NOTARY PUBLIC (SEAL)

My Commission Expires: 10-21-2014




VERIFICATION

David Joyner, being first duly sworn, deposes and says:

THAT he is the Trustee of Barney G. Joyner Family Trust a Defendant in the foregoing RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS JOYNER MARINA, LLC, JOYNER REAL ESTATE HOLDINGS, LLC, BARNEY G. JOYNER FAMILY TRUST and DAVID L. JOYNER and knows the contents thereof; and that all statements contained therein are true and accurate to the best of her knowledge and belief.

This the 16th day of November, 2012.



Trustee
David L. Joyner

STATE OF North Carolina

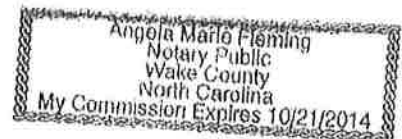
COUNTY OF Wake

I, Angela Marie Fleming, a Notary Public in and for said County and State, do hereby certify that David L. Joyner personally appeared before me this day, verified to my satisfaction her identity and acknowledged and executed the foregoing in my presence.

SWORN to and subscribed before me this the 16th day of November, 2012.


NOTARY PUBLIC (SEAL)

My Commission Expires: 10-21-2014

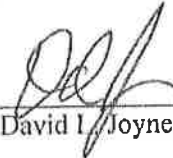


VERIFICATION

David L. Joyner, being first duly sworn, deposes and says:

THAT he is a Defendant in the foregoing action, that he has read the foregoing RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS JOYNER MARINA, LLC, JOYNER REAL ESTATE HOLDINGS, LLC, BARNEY G. JOYNER FAMILY TRUST and DAVID L. JOYNER and knows the contents thereof; and that all statements contained therein are true and accurate to the best of his knowledge and belief.

This the 16th day of November, 2012.


David L. Joyner, Mr., Trustee, Personally

STATE OF North Carolina

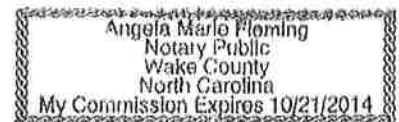
COUNTY OF Wake

I, Angela Marie Fleming, a Notary Public in and for said County and State, do hereby certify that DAVID L. JOYNER personally appeared before me this day, verified to my satisfaction her identity and acknowledged and executed the foregoing in my presence.

SWORN to and subscribed before me this the 16th day of November, 2012.


NOTARY PUBLIC (SEAL)

My Commission Expires: 10-21-2014

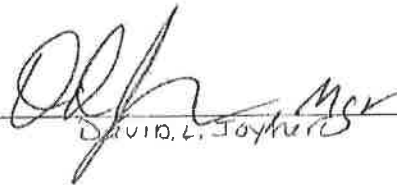


VERIFICATION

David Joyner, being first duly sworn, deposes and says:

THAT he is the Manager of Joyner Marina, LLC a Defendant in the foregoing RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS JOYNER MARINA, LLC, JOYNER REAL ESTATE HOLDINGS, LLC, BARNEY G. JOYNER FAMILY TRUST and DAVID L. JOYNER and knows the contents thereof; and that all statements contained therein are true and accurate to the best of her knowledge and belief.

This the 16th day of November, 2012.



David L. Joyner

STATE OF North Carolina

COUNTY OF Wake

I, Angela Marie Fleming, a Notary Public in and for said County and State, do hereby certify that David Joyner personally appeared before me this day, verified to my satisfaction her identity and acknowledged and executed the foregoing in my presence.

SWORN to and subscribed before me this the 16th day of November, 2012.



NOTARY PUBLIC (SEAL)

My Commission Expires: 10-21-2014

